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In The

SUPREME COURT OF THE UNITED STATES

Jens O.Luebow and
Madison Veterinary Clinic Ltd.

Petitioners

v.

Mark C.Wantuch

Respondent

Petition for Writ of Certiorari
On Review of a Decision and Order of
the Circuit Court Branch 13, State of Wisconsin, Case
04-CV-0654, appealed under Case No. 2005AP2614

Jens O.Luebow D.V.M., Ph.D.
2125 N. Stoughton Rd.
Madison, Wisconsin 53704
(608) 249-8525

Questions Presented for Review

1. Is a finding of adverse possession justifiable where the Court explicitly stated that the plaintiff had failed to prove exclusive use?

2. In the absence of any evidence of improvement of a disputed, non-enclosed strip of land, can a party claiming adverse possession rely on aerial photos to assert exclusive use and improvement?

3. Did the finding by a US Bankruptcy Court that Wantuch's predecessors-in-interest , Richard and Sherry Johnson abandoned the property in 1989, interrupt any potential timeline for adverse possession that was ruled to have occurred between 1976 and 1996?

Parties to the Proceeding

Plaintiffs: Jens O.Luebow and
Madison Veterinary Clinic Ltd.
2125 North Stoughton Rd.
Madison, WI 53704-2613
Tel: (608) 249-8525

Defendant: Mark C. Wantuch
c/o Mr.Walter Erbach
Erbach & Voss, S.C.
6255 University Avenue, Suite 101
Middleton, Wisconsin 53562

Corporate Disclosure Statement

The Madison Veterinary Clinic Ltd. is a very small, non-par-value shareholding service corporation. It is not publicly traded. Jens O.Luebow is the sole owner at the present time. The Madison Veterinary Clinic Ltd. is located at 2125 North Stoughton Rd., Madison, WI 53704, Tel: (608) 249-8525. The president is Jens O.Luebow.

Table of Contents

I.

Questions Presented for Review.....(i)

Parties to the Proceeding.....(ii)

Corporate Disclosure Statement....(iii)

Table of Contents.....(iiii)

Table of cited Authorities and References....(iiiiii)

Statement of the Basis for Jurisdiction in this Court .....(iiiiiii)

II.

Statement of this Case.....p. 1

Argument.....pp. 2-9

Is a finding of adverse possession justifiable where the Court explicitly stated that the plaintiff had failed to prove exclusive use of an open strip of disputed land?.....p. 2

In the absence of any evidence of improvement of a disputed, non-enclosed strip of land, can a party claiming adverse possession rely on aerial photos to assert assumptions of exclusive use and improvement? .....p. 5

Did the finding of a US Bankruptcy Court that Wantuch's predecessors-in-interest, Sherry and

Richard Johnson abandoned the property in 1989, interrupt any potential timeline for adverse possession that was ruled to have occurred between 1976 and 1996? p.8

Summary.....p.9

III. Appendix

App. # 1 : Judgment of the Wisconsin Circuit Court Branch # 13 in Madison, Judge Michael Nowakowski presiding

App. # 2 : Decision of the 4th Circuit Court of Appeals, Case # 2005AP2614

App. # 3 : Order denying Petition for Review pursuant to Wis. Stat. 808.10, dated January 9, 2007, Justice David Prosser dissenting

App. # 4: Denial of Motion for Reconsideration by the Wisconsin Supreme Court, dated January 19, 2007

Table of cited Authorities

1. Allie v.Russo, 88 Wis.2d 334.....p. 4

2. Burkhardt v.Smith, 17 Wis.2d 132.....p. 5

3. Decision of the 4th Cicuit Court of Appeals, Case No.2005AP2614.....App.#2

4. Judgment of the Circuit Court Case 2004CV0654 .....App.#1

5. Liciejewski v.Sedlak, 116 Wis.2d 629.....p. 5

6. Patton v. North Jersey District Water, 93 N.J. 180 (1983) .....p. 3

7. Trial 9/16/05, Hearing Transcript p.324

8. Trial 9/16/05, Hearing Transcript p.325/326

9. United States Constitution Article XIV, Section 1. ..... p. (iiiiiii)

10. Wisconsin Constitution, Article 1. .....p. (iiiiiii)

11. Wisconsin Statute 893.25 (2) (a) .....p. 2

Statement of the basis for jurisdiction in this Court

Petitioners seek review of a decision and order by the Circuit Court, Branch 13 in Madison, Wisconsin, the Honorable Michael Nowakowski presiding. The decision was rendered on September 16, 2005, case # 2004CV0654, (App.#1) and confirmed by the 4th Circuit Court of Appeals in Wisconsin on October19, 2006. (App.#2).The Wisconsin Supreme Court denied review of the case on January 9, 2007, Justice Prosser dissenting. (App.#3) The Supreme Court denied petitioners' Motion for Reconsideration on January 19, 2007.(App.#4)

The decision of the Wisconsin Courts to find adverse possession in favor of a claimant who failed to prove that a) he made any improvements to an open, non-enclosed strip of land and b) failed to prove exclusive use, conflicts with both state law and federal standards that define the minimal requirements for adverse possession. This case also raises the issue whether previous abandonment by a predecessor-in-interest of the adversely claimed land as determined by a US Bankruptcy Court interrupts any adverse possession in progress. To the best of this petitioner's knowledge, there has never been another case where a State Court awarded someone's land to another person under such circumstances. The judgment of the Wisconsin Court technically amounts to an unlawful seizure of property which is prohibited by The United States Constitution, Article XIV, Section 1. and Article 1 of the Wisconsin Constitution. Under Rule 10 (b) SCR a Writ of Certiorari seems appropriate to issue a clarification on mandatory legal requirements to find adverse possession and defining more precisely what events terminate such event.

Statement of this Case

Petitioner Jens O.Luebow acquired the Madison Veterinary Clinic Ltd. on January 31, 1992. On September 18, 2003, petitioner erected a chain link fence on the north border of his property which abutted a driveway and property newly acquired by Mark C.Wantuch on September 16, 2003. Wantuch, a resident of the State of New York, subsequently filed a claim for adverse possession, stating that he and his predecessors in interest adversely possessed a 7.5 x 120 foot strip of land on the north side of Luebow's property and that said strip of land had been maintained as a gravel driveway since 1939. On September 16, 2005, the Circuit Court rendered a decision in Case 2004CV0654, granting Wantuch a 4 x 81 foot portion of his original claim by adverse possession after allowing Wantuch to change his pleading on the last day of trial. The Circuit Court explicitly ruled that Wantuch had failed to prove exclusive use. A substantial part of Wantuch's originally claimed strip of land could never have been a driveway because it harbors large boulders and 50-year old trees. Luebow appealed in the 4th Circuit Court of Appeals under case No.2005AP2614. The Appeals Court affirmed the decision of the Circuit Court despite the fact that Wantuch failed to prove that any improvements were made on any part of the claimed land and that exclusive use existed. Luebow filed a Petition for Review with the Wisconsin Supreme Court . The Petition was denied on January 9, 2007, the Honorable Justice David Prosser dissenting. On January 19, 2007, the Wisconsin Supreme Court denied Luebow's Motion for Reconsideration.

II. Argument

1. Is a finding of adverse possession justifiable where the Court explicitly stated that the plaintiff had failed to prove exclusive use of an open strip of disputed land ?

The right to acquire and possess property is an essential, constitutionally secured right of the people of the United States. It is therefore that high standards have to be met before any Court can seize someone's lawfully acquired land and award it to someone else without compensation to the owner of record. Wisconsin Statute 893.25(2) (a) states that, to prove a claim of adverse possession, a party must show that

> "the person possessing the land, in connection with his or her predecessors in interest, is in actual continued occupation under claim of title, exclusive of any other right. Adverse possession exists only to the extent that the land is actually occupied and (1) protected by a substantial enclosure; or (2) usually cultivated or improved".

In Wisconsin, the above conditions must be met continuously for a period of 20 years. The Statute leaves no doubt that both continued occupation and exclusive use are a mandatory requirement for an adverse possession claim. Literally identical requirements are mandated by federal law:

> " Any entry, whether mistaken or intentionally hostile, is sufficient to support a claim of title by adverse possession, provided, it is

exclusive, continuous, uninterrupted, visible and notorious."
Patton v. North Jersey District Water, 93 N.J. 180 (1983)

However, in this case the trial judge found adverse possession when he knew that minimal statutory requirements were not met and stated so on the record:

"Mr Luebow and counsel contend that the plaintiff has failed to satisfy the Court on two other items on which they have the burden of proof. One is that the use of the property was exclusive, and the other was that they provide the precise property where the adverse use in fact occurred. And Mr.Seibold is correct. The plaintiff has failed to satisfy his burden of proof that the entire disputed parcel was used exclusively by Mr.Wantuch or his predecessors in interest."
Hearing Transcript p.325 line 23-25. and p.326 line 1-6

In fact, Luebow provided sufficient evidence that

1. clients customarily used the disputed area for walking their dogs
2. the area was extensively used for snow storage
3. clients and employees regularly used the disputed area to in-/egress the parking lot of the clinic until 1990 when Hwy 51 became a divided highway.

The Circuit Court later addressed the lack of proof of any improvement by Wantuch or his predecessors-in-interest in the following way:

> "...whatever it is that was done or was not done was consistent with what the nature of the use of the property was, and the use of the driveway exclusively for the benefit of the Wantuch property was open and notorious."
> (Hearing Transcript 10/28/05)

As stated above, the nature of the use of the disputed land was snow storage during winters, clients of the clinic walking their dogs, and employees and clients entering the clinic parking lot from the north for many years until Hwy 51 became a divided 4-lane highway in 1990. The clinic had a large clientele which generated significantly higher traffic on the disputed area than the chronically dilapidated 2-flat Wantuch property ever could. There is no law that would restrict the use of a gravel-base area for cars only. Furthermore, the judge's statement evidences that he does not know whether Wantuch or his predecessors ever improved any part of the claimed land. This fact independently bars a finding of adverse possession. According to *Allie v. Russo*, 88 Wis.2d 334, all reasonable presumptions have to be made in favor of the true land owner.

Wantuch did not present any evidence that he or his predecessors "installed a gravel driveway" on Luebow's land. The fact is that Luebow's parking lot consisted of gravel until 1972 when it was paved with a bituminous surface. A small strip of gravel base remained on the north border of the parking lot, abutting Wantuch's driveway. This particular area harbors the clinic's private gas line and was continuously used by Luebow and his predecessors in interest for walking dogs and snow storage. The verdict

of the Circuit Court in favor of Wantuch clearly ignores elementary statutory requirements and federal case law. In *Liciejewski v. Sedlak*, 116 Wis.2d 629, the Supreme Court ruled:

> "Adverse possession requires enclosure, cultivation or improvement of the land."

The disputed strip of land was neither enclosed, nor cultivated, nor improved nor exclusively used by Wantuch or his predecessors at any time. In addition, notice of adverse use only exists where there is indeed exclusive use that is visible.

> "Further, visible means must provide notice of exclusion of the property to the true owner." (*Burkhardt v.Smith*, 17 Wis.2d 132)

2. In the absence of any evidence of improvement of a disputed, non-enclosed strip of land, can a party claiming adverse possession rely on aerial photos to assert assumptions of exclusive use and improvement?

At trial, the Circuit Court begins its recitation of "findings of facts" with the statement:

> " Mr.Seibold is correct in the description of the standard to be used in assessing a claim of this sort. The plaintiff clearly bears the burden of proving his claim, and his claim must be clear and positive, although the ordinary standard of proof is utilized. And to the extent that there are ambiguities, they ought to be resolved against the plaintiff."

However, as stated above, the Court knew and stated so on the record that the plaintiff had failed to provide

evidence of exclusive use of the disputed strip of land.
Plaintiff started his adverse possession suit as a frivolous claim, stating that he is entitled to "a strip of land 7.5 x 120 feet" alongside the north border of the clinic's parking lot. The judge allowed Wantuch to change his pleading on the last day of trial and suddenly claim a strip of land measuring "4 x 80 feet or so..." However, even for this hastily corrected and unfair claim, there exists no evidence whatsoever that Wantuch or his predecessors exclusively used or improved this particular smaller strip of land. To the contrary, the evidence provided by Luebow bars a claim of adverse possession in a fair court of law.
In this case, the judge contradicts himself on his own findings, inventing speculative assumptions in favor of Wantuch where the facts proved otherwise.
Wantuch's chief witness, Glenn Birrenkott, testified that a former cattle line fence marked the true border between the paved clinic parking lot and the Wantuch gravel driveway. According to Birrenkott, this cattle line fence was removed "when the veterinary clinic was built in the late 50's " and, ever since, the gravel driveway was treated as the true border. Neither Birrenkott nor any other predecessors-in-interest of Wantuch ever widened the alleged gravel driveway at any time. Daniel Murray, a certified land surveyor, found a straight line of multiple cattle fence line posts still in their original position and was able to assert with scientific certainty that the cattle fence described by Birrenkott ran even further north of the fence erected by Luebow in 2003.
The fact is that neither Wantuch nor his predecessors in interest ever improved or maintained anything on or alongside their driveway. The Wantuch property was a two-flat rental unit since 1952 when Glenn Birrenkott left the premises. Dozens of city records testify to

chronic violation of city ordinances and regulations; orders to vacate the property were issued by a city inspector because of unsafe living conditions . Previous owners of the Wantuch property defaulted on their mortgage payments and in late 1989 a Federal Court ruled that the property was abandoned by its owners. The Circuit Court Judge then turned to three black-and-white aerial photos, belatedly presented by Wantuch's attorney and admitted as evidence at trial, and concluded that these aerial photos evidenced improvement, continuous and exclusive use by Wantuch's predecessors in interest. However, such conclusions are arbitrary, unfounded and unreasonable:

1. The first aerial photo was taken by the Department of Transportion in 1976 from an approximate altitude of 12,000 feet. The photo was then enlarged multiple times by Wantuch. No correction for slant error, position error or movement of the plane was undertaken. Besides the fact that an unbiased, reasonable person cannot distinguish surface structures with sufficient certainty, this particular photo shows, at best, abandonment of the Wantuch property.

2. A photo, by its own nature, is an image capturing a split second of a scene. Since the other two aerial photos relied on by Wantuch were taken in 1982 and 1993, there is absolutely no reasonable conclusion possible what happened on an open strip of land bordering the clinic's publicly accessible parking lot. How could anyone determine from these photos whether the disputed strip of land was used exclusively, continuously, improved by Wantuch or occupied?

3. All three photos were either taken during the winter months or at the beginning of spring. This is a time when vegetation, e.g. grass and weeds would not grow on a gravel-base strip of land, even if no one would ever use it for anything. Even if one wants to conclude that all three aerial photos show an open, gravel covered disputed strip of land, there is no way to ascertain that there was any adverse, non-permissive use by Wantuch at any time or for any particular period of time.

3. Did the finding of a US Bankruptcy Court that Wantuch's predecessors-in-interest, Sherry and Richard Johnson , abandoned the property in 1989 interrupt any potential timeline for adverse possession that was ruled to have occurred between 1976 and 1996?

In addition to a history of disarray and dilapidation between the early 1970's and 1990, the Wantuch property was ruled abandoned by a US Bankruptcy Court in December of 1989 after then-owners Richard and Sherry Johnson defaulted on their mortgage payment. The Johnson's bought the property in 1982 from Birrenkott through land contract. Both Birrenkott and the Johnsons were listed as the defendants in the Federal Bankruptcy Case. Between 1972 and 1989 city records evidence dozens of code and ordinance violations of the property, creating unsafe conditions for tenants. There exists absolutely no testimony or other evidence that anyone would have improved the

premises, let alone installed or maintained a gravel driveway on the disputed land or elsewhere.
The above, well-documented conditions alone would preclude a reasonable person from finding adverse possession. In addition, "actual continued occupation" cannot exist where a US Bankruptcy Court found abandonment of the property. The Circuit Court failed to address this issue. There does not seem to exist another case where a claim of adverse possession was granted while a court found abandonment of the property during the statutorily required period of time that adverse possession may develop. The US Supreme Court needs to develop standards that define conditions under which the process of adverse possession is deemed interrupted, respectively, clarify what may constitute "continued occupation".

Summary

The aerial photos used by the Wisconsin Court are an unfit instrument to assert adverse possession of an open strip of land that consists of a gravel base bordering someone's driveway. Had Wantuch's predecessors erected a fence, a building or some other permanent structure on the land he intended to claim, those photos may well have been conclusive. The judge's own findings together with the history of the Wantuch property as evidenced by city records precludes a reasonable person from finding adverse possession in favor of Wantuch. The judgment against Luebow conflicts with Wisconsin Statutes and federal case law. It lacks any justifiable foundation.

Petitioners ask this Court to clarify the above raised questions and establish laws that will prevent unlawful seizure of privately owned property in the future. Whereby petitioners Jens O.Luebow and Madison Veterinary Clinic Ltd. praise the United States Supreme Court to hear this case, overturn judgment of the Wisconsin Courts, re-award petitioners their property and award costs, expenses and such other remedies as are found reasonable under the circumstances.

For Petitioners:

Jens O.Luebow D.V.M., Ph.D.
2125 North Stoughton Rd.
Madison, WI 53704-2613
Tel: (608) 249-8525

Appendix

1. **Judgment of the Wisconsin Circuit Court, Branch #13 in Madison, the Honorable Michael Nowakowski presiding**

STATE OF WISCONSIN
Circuit Court, Branch 13
Dane County

Mark C.Wantuch
41 Grant Street
Avoca, N.Y. 14809
Plaintiff,

V.

Jens O.Luebow
2125 North Stoughton Rd.
Madison, WI 53704
And
Madison Veterinary Clinic, Ltd.,
A Wisconsin Corporation,
2125 North Stoughton Rd.
Madison, WI 53704,
Defendants

Judgment : Case No. 04-CV-0654
Other Real Estate

The above entitled action having come on for trial before the court without a jury on the 15th and 16th days of September, 2005, the Honorable Michael Nowakowski, Circuit Judge, presiding, and the plaintiff having appeared in person and by his attorneys, Erbach&Voss, S.C., by attorney Walter H.Erbach and the defendant, Jens O.Luebow, having appeared in person and defendants having appeared by their attorneys, Murphy Desmond, SC, by attorney Gregory Seibold and attorney Mark Vawter;

And the Court having heard the testimony and arguments of counsel and having orally issued its decision determining that plaintiff is owner by adverse possession of a parcel extending 4 feet south from the survey line of his south boundary and 81 feet to the east of his west lot line.
Now therefore, it is hereby ordered, adjudged and decreed;
1. That plaintiff Mark C.Wantuch is owner by reason of adverse possession of the property more particularly described as follows:
The west 81 feet of the north four feet of:
Part of the northwest one quarter of the southwest one quarter of section 28 township 8 north, range 10 east, in the city of Madison, Dane County, Wisconsin, and being more fully described as follows:
Commencing at the west quarter corner of section 28; thence east 40.0 feet to the east line of US Hwy 51; thence south one degree 47 feet east along said east highway line 222.2 feet to the south line of land Described in volume 389 of Deeds, p.34, Dane County Registry and the point of beginning of this description; thence east along said south line, 300.0

feet; thence south at right angles 90.0 feet; thence west 296.54 feet to the east line of US Hwy 51; Thence north 1 degree 47 feet west, along the east line of US Hwy 51 for a distance of 90.1 feet to the point of beginning. Also described as parcel "B" of certified survey map 28 recorded in the office of the register of deeds for Dane County, Wisconsin, on November 30, 1959, in volume I of certified survey maps, p.28, as document # 992752 located in the city of Madison, Dane County, Wisconsin.
Excepting any part thereof lying within the right of way of US Hwy 51 as now laid out and used.
2. That defendants, Jens O.Luebow and Madison Veterinary Clinic are hereby enjoined and ordered to remove the fence previously installed within the parcel described in par. 1 of this judgment and are further enjoined and ordered to restore the gravel driveway within the parcel described in par.1 to its condition prior to the installation of the fence.
3. That the plaintiff shall have and recover judgment from the defendants, Jens O.Luebow, 2125 North Stoughton Rd., Madison, Wisconsin 53704 and Madison Veterinary Clinic Ltd, a Wisconsin Corporation, 2125 North Stoughton Rd, Madison, WI 53704, for costs and disbursements in the amount of $ 1,282.95. Dated this 11th day of October 2005.
By the Court- Michael Nowakowski, Circuit Judge.

2. Decision of the 4th Circuit Court of Appeals

Court of Appeals Decision dated and filed October 19, 2006. Appeal Number 2005AP2614
State of Wisconsin- In Court of Appeal District IV

Mark C.Wantuch,
Plaintiff-respondent,

V.

Jens O.Luebow and
Madison Veterinary Clinic Ltd.,
Defendants-Appellants

Appeal from a judgment of the Circuit Court for Dane County, Michael N.Nowakowski, Judge, affirmed.
Before Lundsten, P.J., Dykman and Vergeront, JJ.
Per curiam.

Jens Luebow and Madison Veterinary Clinic Ltd., collectively, Luebow, appeal the Circuit Court's judgment in favor of Mark Wantuch Luebow challenges the Circuit Court's ruling that Wantuch is entitled to a narrow strip of Luebow's land based on adverse possession. We affirm.
Wantuch owns property directly north of property owned by Luebow. Many years ago, there was a cattle fence on the property boundary. The fence was taken down about the time Luebow's predecessors-in-interest built a veterinary clinic on the land. After the clinic was built, an asphalt parking lot was installed on

the north end of the Luebow parcel. There is a gravel driveway that runs on the southern border of the Wantuch parcel. Over time, the gravel driveway on the Wantuch parcel widened over several feet of Luebow's property to abutt the asphalt parking lot.
3. A day after Wantuch purchased the property in 2003, Luebow put up a new fence on the property line that bisected the area that had been used as a driveway on the Wantuch parcel. Wantuch then brought this adverse possession action to claim a 7.5 foot strip of land running the length of his property on his southern edge. After a trial, the Circuit Court awarded Wantuch a 4-foot strip of Luebow's land extending 81 feet to the east of his west lot line.
4. " A person, who in connection with his or her predecessors in interest, is in uninterrupted adverse possession of real estate for twenty years...may commence an action to establish title...." Wis. Stat. 893.25(1) (2003-04). "The sole test of adverse possession is the physical character of the possession." Ally v. Russo, 88 Wis.2d 334, 343,276 N.W. 2d 730 (1979). "This physical possession must be hostile, open and notorious, exclusive and continous for the statutory period." Id.
A person claiming adverse possession of land must prove adverse possession by the greatere weight of the credible evidence. Kruse v.Horlamus Indus., Inc., 130 Wis. 2d 357, 358-59, 387 N.W. 2d 64 (1986).
5. Luebow argues that there was insufficient evidence to establish that Wantuch, or his predecessors in interest, improved or maintained the disputed parcel. We reject this argument. The testimony at trial and the photographic evidence established that the

disputed area was improved with a gravel driveway. The evidence showed that the driveway existed in substantially the same condition for more than 20 years. Land is considered "improved" for purposes of adverse possession if it is "put to the exclusive use of the occupant as the true owner might use such land in the usual course of events." Burkhardt v.Smith, 17Wis. 2d 132, 138, 115 N.W. 2d 540 (1962). Wantuch and his predecessors in interest used the driveway as the true owner might - in fact, they thought they were the true owners- by traversing it to reach the garage and by parking cars on it. The fact that they did not more regularly maintain the driveway is not inconsistent with their adverse possession claim because they treated the land as a "true owner" would have treated it.

6. Luebow argues that there is insufficient evidence to show that Wantuch provided visible notice of an intent to exclusively occupy the land. Luebow suggests that the threshold question is whether the improvement "significantly altered the character of the land in a matter which would give a reasonably diligent landowner notice of adverse possession," quoting Pierce v.Gorski, 88 Wis. 2d 131, 138,276 N.W. 2d 352 (Ct.App.1979)

Under this test, there is no question that Luebow had notice. The land was actively being used as a driveway by the Wantuch parcel, with cars parking on it and driving to and fro.

7.Luebow countered that he had occasionally used the driveway to store plowed snow and that it had been used by others in the past to access the veterinary clinic's parking lot. The Circuit Court specifically took the incidental use by Luebow and others into

account in deciding to award Wantuch a 4- foot strip of land, rather than a 7.5 foot strip. The Court did not award all of the land because it concluded that Wantuch had not established that his use of the 3.5-foot portion was exclusive.

8. Luebow argues that the Circuit Court erred in trying to reconcile the testimony of Glenn Birrenkott, a former owner of the Wantuch parcel, with the testimony of Luebow's surveyor, Mead&Hunt, about the location of the old cattle fence. Birrenkott testified that the old fence was located in nearly the same location as the boundary between the gravel driveway and the blacktop parking lot. The surveyor testified that the former fence was located 1 foot north of the new fence, which would place the old fence several feet north of where Birrenkott believed it to be. Luebow contends that the Circuit Court should have believed the testimony of the surveyor because all reasonable presumptions must be made in Luebow's favor as title holder. S. Wis.Stat. 893.30 ("The person establishing a legal title to the premises is presumed to have been in possession of the premises..."); Allie, 88 Wis. 2d at 343 ("All reasonable presumptions must be made in favor of the true owner") . The Court was required to start with the presumption favoring title ownership, but the Court was not required, as Luebow argues, to resolve all conflicts in the testimony in favor of the title holder. Were it so, there would be little need for trial. More importantly, the dispute about the location of the old cattle fence, which existed over 50 years ago, had no significant relevance to the issues in this case.

9. Luebow argues that the Circuit Court impermissibly allowed Wantuch to give surprise

testimony at trial. The surprise testimony consisted of Wantuch's statements at trial reducing his adverse *posssession claim from a narrow strip of land* spanning the entire length of his property to a narrow strip of land coextensive with the area where the gravel driveway was, eliminating a portion of the claim to the east of where the driveway lay. Luebow claims this change constitutes a "trial by ambush". s. Haack v.Temple, 150 Wis. 2d 709, 716,442 N.W. 2d 522 (Ct.App.1989). ("Wisconsin has abandoned the concept of "trial by ambush" where neither side of the lawsuit knows until the actual day of trial what the other side will reveal in the way of witnesses or facts." (Citation omitted). We agree with Wantuch that " the concession that the evidence did not show an adverse possession claim to an additional strip of property extending to the back or eastern boundary of the property was certainly not prejudicial to Luebow and can hardly be considered as a prejudicial surprise, or trial by ambush."

10. In sum, the Circuit Court's finding that the southern portion of the driveway was openly and continuously used by Wantuch and his predecessors in interest for over 20 years is supported by the record. The Court based its decision both on the testimony and on the photographs, stating that "the aerial photographs do not lie". We conclude there is sufficient evidence to support the Circuit Court's decision that Wantuch is entitled to a 4-foot strip of land based on adverse possession.

By the Court- Judgment affirmed.

This opinion will not be published.

3. Order of the Supreme Court of Wisconsin denying the Petition for Review pursuant to Wis.Stat. 808.10, dated January 9, 2007.

Office of the Clerk
Supreme Court of Wisconsin
110 East Main Street, Suite 215
P.O. Box 1688
Madison, WI 53701-1688

To: January 9, 2007
Hon. Michael N.Nowakowski
Dane County Circuit Court Judge
215 S.Hamilton, Br.13, Rm.5109
Madison, WI 53703

Judith A.Coleman
Dane County Clerk of Circuit Court
215 S.Hamilton, Rm. 1000
Madison, WI 53703

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Jens O.Luebow
2125 N.Stoughton Road
Madison, WI 53704

You are hereby notified that the Court has entered the following order:

No. 2005AP2614 Wantuch v.Luebow
L.C.#2004CV654

A petition for review pursuant to Wis. Stat. 808.10 having been filed on behalf of defendants-appellants-petitioners, Jens O.Luebow, et al., and considered by this court;

It is ordered that the petition for review is denied, with $50 costs. Prosser, J., dissenting.

Cornelia G. Clark
Clerk of Supreme Court

4. Denial of Motion for Reconsideration by the Wisconsin Supreme Court, dated January 19, 2007

Office of the Clerk
Supreme Court of Wisconsin
110 East Main Street , Suite 215
P.O.Box 1688
Madison, WI 53701-1688

January 19, 2007

Addresses: Honorable Michael Nowakowski
Carlo Esqueda, Clerk
Walter H.Erbach
Gregory P.Seibold
Jens O.Luebow

You are hereby notified that the Court has entered the following order:
#2005AP2614 Wantuch v.Luebow LC2004CV654

The Court having considered the motion of defendants-appellants, Jens O.Luebow and Madison Veterinary Clinic Ltd,
To reconsider its January 9, 2007, order denying the petition for review filed in this case, and the Court noting that there is no statutory authority permitting a motion for reconsideration of an order denying a petition for review, Archdiocese of Milwaukee v.City of Milwaukee, 91 Wis. 2d 625,284 N.W. 2d 29 (1979);
It is ordered the motion is dismissed. No costs.
Clerk of Supreme Court